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Raymond W. Campbell TAYLOR & AUST, P.C. 142 S. Main St. P.O. Box 560 Avilla, IN 46710			TAWFIK, SAMEH	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/681,524

Filing Date: October 08, 2003

Appellant(s): MARCO ET AL.

Raymond Campbell
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06/17/2010 appealing from the Office action mailed 01/12/2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-13 pending;

Claims 1-7 rejected;

Claims 8-13 allowed.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The 35 USC 112, first paragraph rejection of claims 1-7 have been withdrawn by the examiner.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

5,868,659	Slomski	02/1999
5,487,465	Broskow	01/1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slomski (U.S. Patent No. 5,868,659) in view of Broskow (U.S. Patent No. 5,487,465).

Slomski discloses a method of making a container carrier, comprising steps of: providing a handle sheet and a carrier sheet (Fig. 4; via sheets handle sheet 56 and container sheet 52); positioning the handle sheet (56) on at least a portion of the carrier sheet (52), see for example (Fig. 4); connecting the handle sheet and the carrier sheet along a line of attachment (Figs. 3 and 4; via along attaching line 46/38); forming a container holding portion (via 22) only in the carrier sheet, including forming first and second rows of container receiving apertures in the carrier sheet on opposite sides of the line of attachment (Figs. 3, 4, and 6); and forming holes only in the

handle sheet simultaneously with forming the first row of apertures (Fig. 4; via forming holes in the handle sheet 56 simultaneously with forming the apertures of web 52), the holes and the first row of apertures formed in substantially the same configurations, see for example (Fig. 4).

Slomski does not disclose the step of forming first and second rows of container receiving apertures in the carrier sheet after the steps of positioning and connecting nor the step of forming holes in the handle sheet and the forming the first row of container receiving apertures in the carrier sheet being performed by cutting through overlaying portions of the handle sheet and the carrier sheet to form holes and row of apertures in overlaying arrangement.

However, Broskow discloses a similar method and apparatus of making a container carrier with the step of forming first and second rows of container receiving apertures in the carrier sheet after the steps of positioning and connecting, and the step of forming holes in the handle sheet and the forming the first row of container receiving apertures in the carrier sheet being performed by cutting through overlaying portions of the handle sheet and the carrier sheet to form holes and row of apertures in overlaying arrangement see for example (Fig. 5; via stamping die 64 cutting through overlying portions of the handle sheet/portion and the carrier sheet/portion to form holes of container receiving apertures and holes in the handle portion).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Slomski's method and apparatus by having the step and means of forming first and second rows of container receiving apertures in the carrier sheet after the steps of positioning and connecting, via by connecting webs 52 to 56 before been feed to the forming stations 60 and 62, and the step of forming holes in the handle sheet and the forming the first row of container receiving apertures in the carrier sheet being performed by

cutting through overlaying portions of the handle sheet and the carrier sheet to form holes and row of apertures in overlaying arrangement as suggested by Broskow, as a matter of engineering design choice.

Regarding claim 2: Slomski discloses the step of connecting performed by creating a substantially continuous weld between said sheets (Figs. 3 and 4; via weld/seal line 38).

Regarding claim 3: Slomski discloses the step of connecting the handle sheet with the carrier sheet along first and second spaced lines of attachment (Figs. 3 and 4; via connecting 64 at it's both sides with respect to the carrier sheet); and removing a portion of the handle sheet between the first and second spaced lines of attachment, see for example (Fig. 4; via by removing portions of handle 26 between two connecting lines 38), to define first and second handle sheet portions separate from each other (via sequence of handle sheet portions 26).

Regarding claim 4: Slomski in view of Broskow does not disclose a third row of apertures in the carrier sheet. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Slomski in view of Broskow by having a third row of apertures in the carrier sheet, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.

Regarding claim 5: Slomski discloses the step of forming holes in the handle sheet simultaneously with forming the apertures, see for example (Fig. 4).

Regarding claim 6: Slomski discloses the step of forming first and second handles in the handle sheet (via multiple forms of 26).

Regarding claim 7: Slomski in view of Broskow does not disclose the step of forming a merchandising panel. However, the examiner takes an official notice that such a merchandising panel in container carrier is old, well known, and available in the art.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Slomski in view of Brosko, by having the step of forming a merchandising panel, as a matter of engineering design choice, in order to advertise for the products.

(10) Response to Argument

A. Examiner interpretation of the independent claims

During patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification. Phillips v. AWH Corp., 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). See also MPEP 2111. Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. In re Am. Acad. of Sci. Tech Ctr., 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). See also MPEP 2111.01.

Independent claim 1:

A method of making a container carrier, comprising steps of:
Providing a handle sheet and carrier sheet;
Positioning the handle sheet on the carrier sheet;
Connecting the handle sheet and the carrier sheet;
Forming a container holding portion only in the carrier sheet (apertures);
Forming a handle portion only in the handle sheet (apertures);
The step of forming container holding portion comes *after* the steps of positioning and connecting;

Forming holes in the handle sheet and the carrier sheet substantially in the same configurations one over the other.

The claim recites a method of making container carrier, which in the broadest reasonable interpretation, could be seen as positioning two sheets together, form holes in both sheets to come up with handle portion and carrier portion in the combined sheets.

B. The rejection of claims 1-7 under 35 U.S.C. 103(a) is proper and should be affirmed.

Appellants argue that the applied art of Broskow '465 does not teach the claimed invention as it does not show the use of two separate sheets one service as handle sheet while the other as carrier sheet, instead shows handle portion and carrier portion in common sheet. The examiner may agrees with applicants that '465 does not use separate sheets (carrier sheet and handle sheet). However, the examiner strongly maintains that the main applied art of Slomski '659 discloses the teaching of using two separate sheets one for the purpose of forming *only* handles in the handle sheet while the other sheet for the purpose of forming only carrier in the carrier sheet (Fig. 4; via separate sheets 26 and 24). *Note, the secondary applied reference '465 was only provided to show the teaching of having the step of forming container holding portion comes after the step of positioning and connecting sheets.*

In response to appellant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., providing a carrier that can be produced efficiently while using materials that can be different for both the carrier sheet and the handle sheet to optimize the performance of each) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations

from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Appellants further argue that neither applied references alone or in combination teaches forming a carrier by attaching a handle sheet and carrier sheet one to the other before forming the container receiving apertures and the handle configuration. The examiner likes to draw appellants attention that the applied art '465 clearly discloses what was not disclosed by the main applied reference '659, which is the teaching of forming a carrier by attaching a handle sheet and carrier sheet (Fig. 5; via two separate attached sheets 58 and 60) one to the other before forming the container receiving apertures and the handle configuration (via attaching the sheets before forming handle and carrier portions/holes).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,
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